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PATENT  
Customer Number 22,852  
Attorney Docket No. 03715-0123-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Michel BUREAU et al. ) Group Art Unit: 1632  
Application No.: 09/986,033 ) Examiner: J. Voitach  
Filed: November 7, 2001 )  
For: IMPROVED METHOD FOR )  
TRANSFERRING NUCLEIC )  
ACIDS INTO THE STRIPED )  
MUSCLE AND COMBINATION )  
THEREFOR )

RECEIVED  
JUL 22 2003  
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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**RESPONSE TO RESTRICTION REQUIREMENT**

In response to the Office Action dated April 18, 2003, the time for response there to being extended to July 18, 2003 by the two-month extension of time filed herewith, Applicants respectfully request reconsideration of the present application in light of the following remarks.

Claims 85-117 are pending in this application. In the Office Action, the Office required restriction under 35 U.S.C. § 121 to one of the following groups of claims:

- Group I - Claims 85-103, 114, and 115, drawn to a method for promoting angiogenesis by providing a polynucleotide which encodes an angiogenic factor to a cell *in vivo*, classified in class 514, subclass 44.
- Group II - Claims 104-106, and 111, drawn to a method for promoting hemostasis by providing a polynucleotide which encodes a blood clotting factor to a cell *in vivo*, classified in class 514, subclass 44
- Group III - Claims 107, 108, and 116, drawn to a method for stimulating nerve growth by providing a polynucleotide which encodes a

neurotrophic factor to a cell *in vivo*, classified in class 514, subclass 44.

- Group IV - Claims 109, 110, and 113, drawn to a method for promoting formation of red blood cells by providing a polynucleotide which encodes a hematopoietic factor to a cell *in vivo*, classified in class 514, subclass 44.
- Group V - Claim 112, drawn to a method for expressing secreted alkaline phosphatase by providing a polynucleotide which encodes a SeAP factor to a cell *in vivo*, classified in class 514, subclass 44.
- Group VI Claim 117, drawn to a method for expressing human growth hormone by providing a polynucleotide which encodes a human growth hormone to a cell *in vivo*, classified in class 514, subclass 44

In addition, if Group I, II, III or IV is elected, the Office required a further election of species from the following group:

- (a) angiogenic factors: VEGF, FGF 1, angiopoietin 1 angiopoietin 2, endothelin;
- (b) hemostasis/blood-clotting factors: factor VII, factor VIII, factor IX;
- (c) neurotrophic factors: NGF, BDNF, NT3, NT4/5, NT6;
- (d) hematopoietic factors, erythropoietin, GM-CSF, M-CSF, LIF.

The restriction requirement is respectfully traversed. However, to be fully responsive to the restriction requirement, Applicants elect, with traverse, the subject matter of Group IV, Claims 109, 110, and 113. Additionally, Applicants elect, with traverse, erythropoietin, as the elected species of hematopoietic factors. Elected claims 109, 110, and 113 read on the elected species.

Applicants refer the Office to M.P.E.P. § 803, which sets forth the criteria and guidelines for Offices to follow in making proper requirements for restriction. The M.P.E.P. instructs the Office as follows:

If the search and examination of an entire application can be made without serious burden, the Office must examine it on the merits, even though it includes claims to distinct or independent inventions.

M.P.E.P. § 803 (emphasis added).

The Office has not shown that examining either Groups I - VI or the species together would constitute a serious burden, especially in view of the fact that all of the groups belong to class 514, subclass 44. Searching one class and subclass surely can not be a serious burden. For at least this reason, Applicants respectfully submit that the restriction/election requirement is in error and request that the requirement be withdrawn.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.



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Dated: July 17, 2003